IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

CRL.A.No. 780 of 1999()

SC.88/1997 of I ADDL. SESSIONS COURT, KOLLAM

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APPELLANTS: ACCUSED NOS. 1 AND 2

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1. **VINOD,**
   S/O.CHANDRASEKHARAN PILLAI,
   CHANDRA BHAVAN,
   ERATHUKULAKKARA,
   KALAYAPURAM, KOLLAM.

2. **CHANDRASEKHARAN PILLAI,**
   S/O. MADHAVAN PILLAI,
   CHANDRA BHAVAN, ERATHUKULAKKARA,
   KALAYAPURAM, KOLLAM.

BY ADV. SRI. V.V.RAJA

RESPONDENT: COMPLAINANT

STATE OF KERALA, REP.BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No.780 of 1999

Dated this the 31st day of January, 2007

Judgment

Three accused faced trial in Sessions Case No.88 of 1997 for offences punishable under sections 449, 324, 302 of Indian Penal Code read with section 34 IPC. The trial court found that A3 is guilty and convicted for offences punishable under sections 447 and 304 Part I, IPC and he was convicted to undergo rigorous imprisonment for seven years under section 304 Part I and three months for offences punishable under section 447 IPC. As far as A1 and A2 are concerned, trial court found that they are not guilty under section 449 and 304 or 302 read with section 34 IPC, but, it was found that they were guilty for offences punishable under section 447 and 323 IPC. According to the prosecution, on 5.8.1996 at about 8.00 p.m. accused Nos.1 to 3 committed criminal trespass into the premises of residential building of deceased Krishnankutty by entering into the courtyard of the house and A1 shouted against the deceased Krishnankutty and inflicted blows on the back of deceased Krishnankutty. A2 also beat him with a wooden plank and immediately A3 came with a knife stabbed Krishnankutty on the chest. A2 also beat PW1 Omana, wife of the deceased and A1 kicked on the

abdomen of the deceased. Subsequently, after undergoing treatment, Krishnankutty succumbed to the injuries. Finding of the Sessions Court with regard to the involvement of the accused are as follows:

> "71. The involvement of the accused in the crime having been found the next aspect for consideration is regarding the extent of their liability. The genesis of the occurrence, the nature of the weapon used, the seat of the injury, the circumstances under which the injuries were inflicted, all spell the intention nursed by the assailants at the relevant time. At the initial stage, no weapon was used and assault with hand, kick, stamping etc. alone were in the scuffle. When the deceased ran towards the shed the accused followed him and it was from inside the shed, A2 was stated to have taken the wooden plank and A3 was stated to have taken out the knife. Therefore, it was during the course of the scuffle, in a heat of passion, under the sudden impulse, the weapons were used. Considering the circumstances, it could be seen that so far as the stab by A3 was concerned his overt act would come within the exception to section 300 IPC and if so, it has to be found that with the necessary intention, he had committed culpable homicide not amounting to murder coming within the ambit of section 304 I, IPC.

> 72. So far as A1 and A2 are concerned, it could be seen that the common intention of the parties was to make the assault and as such their overt act would come within the ambit of section 323 IPC. Further, MO2 wooden piece has not been proved to be a deadly weapon, there was no external injuries to PW1 and the multiple abrasions found on the body of the deceased were not on the vital parts. It has to be also found that in making the assault the accused had trespassed into the courtyard of the shed belonging to PW1 and the deceased and as such there was criminal trespass committed by them coming within the ambit of section 447 IPC. The attack was against the unarmed deceased as per the evidence and there was a scuffle as indicated. Being the aggressors, the accused are not entitled to the benefit of the exercise of the right of private defence."

The court also found that with regard to the occurrence of the incident, evidence of PWs 3 to 5 cannot be believed and even going by the evidence of PWs 1 and 2, the scuffle started even before the parties reached at the courtyard. PW1, injured witness, deposed that after closing the shop, the couple returned to the house along with Rajappan Pillai and PW1 and Krishnankutty entered the courtyard of their house and accused came and overtook them. Rajappan Pillai

was examined as PW4. He was declared hostile. According to PW1, there was a scuffle and some persons fell down. Thereafter, the overt act took place. It has also come out in evidence that the wooden plank said to have been used by A1 was the one which was taken from the courtyard after the scuffle has started. The prosecution case is that CW17 sent a letter to the daughter-in-law of the deceased and he thought that the above letter was written by A1 and there was some enmity between the parties and while Krishnankutty was returning from the shop, the incident occurred and it continued till his courtyard and the injuries inflicted in the scuffle. The above case was proved by the evidence of PWs 1 to 5. With regard to A3, he has filed separate appeal Crl. Appeal No.673 of 1999 and this court dismissed the appeal filed by A3. Evidence of witnesses were analysed in that case also. Considering the evidence of injured witnesses as well as PW5, wife of the accused, the conviction of the appellant under section3 23 and 447 IPC cannot set aside and the Sessions Court was right in convicting the accused. However, we feel that as far as A1 and A2 are concerned, a wooden plank said to have been used by A2 is the one that was picked up from the courtyard and A3 did not use any weapon and during the scuffle, A3 came and interfered and stabbed the deceased. Considering

the facts and circumstances of the case, we are of the opinion that the sentence imposed on the appellants (A1 and A2) can be reduced. Considering the nature and circumstances of the evidence concerned, we are of the opinion that the sentence of imprisonment of 14 days and payment of fine of Rs.1,000/- each will be sufficient for the offence punishable under section 323 and imprisonment of 14 days and payment of fine of Rs.500/- each for the offence under section 447 will be sufficient sentence. We sentence A1 and A2 accordingly. If the fine is not paid, they will have to undergo another three months' imprisonment. The substantive sentence shall run concurrently. The accused persons (A1 and A2) are also entitled to the right of set off. The appeal is allowed partly.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl.A.No.780 of 1999

Judgment

31-1-2007